

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Cr. No. 19-4440 MV

NICHOLOUS PHILLIPS,

Defendant.

UNITED STATES' MOTION FOR A *LAFLETER/FRYE* HEARING

The United States of America respectfully moves this Court to order a hearing before a United States Magistrate Judge to inquire with the defendant, Nicholous Phillips ("Defendant"), and his attorney, Joe Romero, Esq., of Romero and Winder, P.C., whether defense counsel communicated to Defendant the plea offer extended by the United States in this matter. In support of this motion, the United States provides:

1. A criminal defendant has the right to effective assistance of counsel during pre-trial plea negotiations, including with respect to plea offers that lapse or the defendant rejects. *See Lafler v. Cooper*, 566 U.S. 156 (2012); *Missouri v. Frye*, 566 U.S. 134 (2012).

2. The United States extended a plea offer to Defendant on December 19, 2019, by emailing a letter to Defendant's former counsel, Kari Converse, outlining the terms of a proposed agreement. Ms. Converse informed the United States that she reviewed the proposed plea agreement with Defendant, but Defendant rejected it.

3. After Defendant obtained new counsel, the United States renewed its original plea offer on February 13, 2020, by emailing a letter to Joe Romero, outlining the terms of the proposed agreement. After extending the deadline for Defendant's acceptance a number of times, Mr.

Romero informed the United States by phone that he reviewed the proposed plea agreement with Defendant, but Defendant again rejected it.

4. To protect against any future claim of ineffective assistance of counsel on this issue, the United States respectfully requests that the Court direct a magistrate judge to inquire on the record at a hearing whether defense counsel informed Defendant of the United States' plea offer and whether Defendant chose to reject this offer.

5. Further, the United States requests that the Court direct the magistrate judge to make the prosecution's plea offer letters sealed exhibits at the hearing and verify that Defendant and defense counsel discussed the terms of the letters before rejecting the United States' proposed resolution.

6. The United States has conferred with Defendant's counsel, Joe Romero, and he opposes the Court ordering a *Lafler/Frye* hearing in this matter.

Respectfully submitted,

JOHN C. ANDERSON
United States Attorney

/s/ Jaymie L. Roybal
JAYMIE L. ROYBAL
Assistant United States Attorney
P.O. Box 607
Albuquerque, N.M. 87103
(505) 224-1413

I HEREBY CERTIFY that I filed the foregoing pleading electronically through the CM/ECF system which caused defense counsel, Joe Romero, to be served by electronic means, as reflected on the Notice of Electronic Filing as indicated therein on June 22, 2020.

/s/
Jaymie L. Roybal
Assistant United States Attorney